

3. DLJ Mortgage filed a counterclaim asserting that it was equitably subrogated to a prior deed of trust lien because its loan funds were paid to discharge the prior loan and deed of trust lien. DLJ Mortgage claimed in the alternative that if it did not have a right to subrogation, then Gail Gillespie, Audrey Gillespie, and Delores Foster were liable to it for breach of warranty and breach of the covenant of seisin. In the further alternative, DLJ Mortgage sought a declaratory judgment that it had a security interest in Audrey Gillespie's and Delores Foster's interest in the property.

4. On March 15, 2015, the Court entered an Order denying Plaintiffs' Motion for Summary Judgment and found that Ocwen Loan Servicing (who was the defendant at that time) "was equitably subrogated to the original deed of trust in the amount of \$215,073.17 plus judgment interest accrued since the loan funds were paid to discharge that amount." Docket Entry 31 at 3. In Ocwen's Response to Plaintiffs' Motion for Summary Judgment, Ocwen presented evidence that the \$215,073.17 was paid on August 21, 2009. Docket Entry 20 at Ex. B-3.

5. On October 29, 2015, the Court entered an Order granting DLJ Mortgage's motion for summary judgment and motion for judgment on the pleadings. *See* Docket Entry 37. The Order disposed of all causes of action asserted by Plaintiffs against DLJ Mortgage by either granting summary judgment or judgment on the pleadings. The Order further granted summary judgment on DLJ Mortgage's claim that it was equitably subrogated to the prior deed of trust lien and quoted from the Court's Order of March 15, 2015, as stated herein at paragraph 4.

6. Because the Court has found that DLJ Mortgage is equitably subrogated, thus establishing its right to foreclose, DLJ Mortgage no longer wishes to pursue its remaining counterclaims against Plaintiffs that were asserted in the alternative. DLJ Mortgage, therefore, requests that its counterclaims for breach of warranty, breach of the covenant of seisin, and declaratory judgment be dismissed without prejudice.

7. Federal Rule of Civil Procedure 58 provides that the Court must approve the form of the judgment, which the clerk shall enter, if the Court grants relief that is not described in Rule 58(b). In the present case, the Court granted summary judgment and judgment on the pleadings, which relief is not described in Rule 58(b). Therefore, DLJ Mortgage requests that the Court enter judgment in favor of DLJ Mortgage and against Plaintiffs on all of Plaintiffs' claims. DLJ Mortgage further requests that the Court enter judgment in favor of DLJ Mortgage and against Plaintiffs on DLJ Mortgage's claim for equitable subrogation and enter judgment that DLJ Mortgage is entitled to foreclose on the deed of trust lien to which it is subrogated.

WHEREFORE, DLJ Mortgage respectfully requests that the Court dismiss its remaining counterclaims as requested herein, enter a final judgment in favor of DLJ Mortgage and against Plaintiffs, and grant DLJ Mortgage such other and further relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served in accordance with the Federal Rules of Civil Procedure upon the following counsel as indicated below on February 10, 2016.

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